

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

MELODY STOOPS, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	Case No. 3:15-cv-00083-KRG U. S. District Judge: Honorable Kim R. Gibson
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**PLAINTIFF MELODY STOOPS' MOTION SEEKING LEAVE TO SUBMIT A
SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF HER OPPOSITION TO WELLS
FARGO BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE RULE 56(E)**

Pursuant to Federal Rules of Civil Procedure Rule 56(e), Plaintiff Melody Stoops ("Plaintiff") respectfully requests leave to submit a supplemental affidavit containing newly discovered evidence in support of her Opposition to Defendant Wells Fargo Bank, N.A.'s Motion for Summary Judgment (Docket No. 44, #1, p. 1, ¶ 1).

A proper application of Rule 56(e) may be limited to the submission of affidavits containing newly discovered evidence, or affidavits responding to matters first raised by the nonmoving party in opposition to the motion. *See Pelletier v. Zweifel*, 921 F.2d 1465, 1494 (11th Cir. 1991) (noting defendant seeking leave to submit supplemental affidavit was —armed with new information, which justified the granting of the request); *Dudo v. Schaffer*, 91 F.R.D. 128, 133 (E.D. Pa. 1981) (noting propriety of submitting a supplemental affidavit for newly discovered matter).

In Wells Fargo Bank, N.A.'s Concise Statement of Undisputed Material Facts supporting its Motion for Summary Judgment, Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") introduced evidence:

"Plaintiff Melody Stoops was convicted of felony theft and felony forgery in 2013 relating to position in medical billing. Her sentence included, *inter alia*, probation through at least 2017. See Stoops Depo. at p. 54:4-16; 58:6-8; 59:14-23; 61:18-22; 62:5-24, attached as Exhibit A to the Declaration of Divya S. Gupta ('Gupta Decl.')."

Case No.: 3:15-cv-00083-KRG, Docket No. 44, #1, p. 1, ¶ 1.

Plaintiff has just discovered new evidence that Plaintiff was not convicted of felony theft and felony forgery in 2013 but was imposed a deferred sentence and judgment on only one felony forgery count and one misdemeanor theft count.

On November 21, 2013, Plaintiff through her counsel, David L. Owen, Jr., negotiated a guilty plea to two counts: Count 2 – attempted theft (a misdemeanor) and Count 6 – forgery (a felony) in the Boulder County District Court located in Boulder, Colorado, in Case No.: 2013-cr-1273. See Declaration of David L. Owen Jr. ("Owen Decl."), ¶ 3. Pursuant to the guilty plea, the Court imposed a Deferred Sentence & Judgment on the felony count of forgery and a four (4) year term of unsupervised probation for both counts. *Id.*

Plaintiff has recently discovered that on February 25, 2016, Judge David A. Archuleta, in Case No.: 2013-cr-1273, granted Plaintiff's Motion for Early Termination of Unsupervised Probation, which successfully completed Plaintiff's probation term. See Owen Decl., ¶ 4; "Motion for Early Termination of Unsupervised Probation" is attached as **Exhibit A** to Owen Decl. **Upon completion of the probation term, the deferred judgment on Count 6 was reversed, the charges dismissed and Plaintiff does not have a felony conviction.** See Owen Decl., ¶ 4; "Motion for Early Termination of Unsupervised Probation" is attached as **Exhibit A** to Owen Decl.

In light of the newly discovered evidence and pursuant to Rule 56(e) of the Federal Rules of Civil Procedure Plaintiff respectfully requests leave to submit the supplemental affidavit of

David L. Owen Jr. containing the newly discovered evidence in support of her Opposition to Defendant's Motion for Summary Judgment.

Respectfully submitted,

DATED: February 29, 2016

By: /s/ Joseph R. Manning, Jr.
Joseph R. Manning, Jr.

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